

## **MINI-STORAGE MESSENGER**

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### **HOW TO HANDLE THE DEATH OF A TENANT**

A difficult and often slippery issue to handle is what you can do if your tenant dies.

I used to recommend that you should have co-tenants, if possible, on each unit. As an example, if the person that was renting from you was married, you would name the other spouse so that he/she could have rights of access to the premises. I now have a different opinion on that subject because of how many two-tenant units end up in the same sort of messy domestic dispute, and I now recommend that you only allow one person to be your tenant. If your tenant wants to let other people into the space, it is up to that tenant to give the code and key to let people into his/her unit. However, this does create a problem when that tenant dies. It is my experience that less units end up in controversy when someone dies than end up in a domestic controversy.

Presuming you do not have a remaining co-tenant and no one who has access on their own with a key, then we have to look to the law on the subject of probate. Understand that when a tenant dies, it is not up to the Self-Storage operator to decide who gets the property stored in your facility.

While every state law is different, there are some general universal concepts. Most importantly, when your tenant dies, and you do not have a co-tenant, you can not simply turn the contents over to the wife or first relative that comes to collect the decedent's belongings, unless they have access without your assistance, i.e., they know the gate code and have a key to the unit in which case you can not stop this person from entering unless the unit is overllocked for non-payment. Self-storage is not a safety deposit box.

When any person dies, the estate may or may not go through probate, whether there is a Will or not. The need for probate is normally determined based on the type and size of the assets the decedent has left behind. Often, if a person passes away and only has minimal assets, no cars, stocks, bonds, etc., and has a surviving spouse, the estate does not probate because none of the assets need to be transferred via the court to the surviving spouse; they transfer automatically by the way that the assets are titled. Further complicating the process is that not everyone has a Will where they

have named an executor (or the female version, executrix), or an administrator (administratrix). (I will refer to this person as the executor through the rest of this article). Probate can occur even if there is no Will, but generally there has to be some reason to probate, such as the need to transfer an asset.

If the estate is probated, you need only find out from the court the name and address of the executor of the estate. Most probate courts issue a “certified letter of authority” which is a court order, putting the world on notice that a particular person is the authorized executor to act on behalf of the estate. If someone represents to you that they are the executor of your tenant’s estate, you need only ask for that type of certified order; keep a copy in your files. A copy in your file is sufficient to allow that person, “on behalf of the estate”, to pay the rent, and/or to remove the possessions or enter into a new lease agreement with you, or cancel the old lease agreement. This is the “best case” so it rarely works out this way.

By the way, do not be surprised that in some instances, the probate estate can not pay rent immediately after it is opened. Sometimes it takes time to marshal assets, and the probate court needs to approve, depending on where you live, certain expenditures. You can generally get paid by having your attorney file a Proof of Claim with the estate.

Sometimes the tenant has a Will, but the assets are insufficient, or are not the character that would require, that the estate to be probated, so the family does not open an estate with the court. This is more difficult because you can not be sure you are working with the “authorized” person.

Your next safest option is to open a probate estate on behalf of the decedent to get you the same protection. This is unlikely to happen because of the costs to the Self-Storage facility. However, this is the best legal answer I can give.

If all else fails, your best “worst” answer is to obtain a release with indemnification from the executor if one is named in a Will and if not, then from as many of the relatives as you can locate or determine, who may have a claim to the property. This is also your best “worst” option if the tenant dies without a Will and the family is unwilling to open an estate anyway to probate the assets.

The best way to get a release to cover you is to ask the people who have come seeking to get into the unit to provide a list of all of the decedent’s relatives, you can normally check an obituary to confirm this information, obituaries rarely lie. You may also have to open the unit and see if you can determine if there is any property that appears to belong to anyone other than the family of the

decedent. Please keep in mind, however, that proceeding without actually opening an estate does not offer you any protection from all possible claims, and the only failsafe way to proceed, especially where assets have value, is to have an estate opened by the family or by your company.

If you have wondered why you do not just lien sale the goods, the main problem is getting service of the lien notice by certified mail. Certified mail service on a dead person may create a technical failure as the mail will often be returned as undeliverable, and therefore poses too much risk.

If you are forced to proceed with the route of collecting releases, obtain the release of as many of the relatives and other people who might have interests in the property and release the property to whomever the releases say can collect the property. Get a receipt. Your attorney should be involved in the process of drafting the best release possible. Video tape the lock cut and the contents of the unit, and if possible, video tape the relative(s) removing the property. Be certain you understand the risk of litigation by proceeding with this alternative, and have an indemnification provision in your releases. Under the release-only alternative, you are always at risk. There can be a claim from other relatives, friends, or creditors that possessions in the unit belonged to them and that you had no right to release them. Unfortunately, if there is no estate and you can not open one, the best you can do is obtain as many releases as possible and proceed.

Tenant deaths normally work themselves out, because someone has access and clears out the unit, but in these cases where that does not happen, you really must be careful to proceed in the least-risky way possible, understanding that without a court-appointed executor in an estate, you are exposing yourself to a possible great risk.

Jeffrey Greenberger is a Partner with the law firm of Katz Greenberger & Norton LLP in Cincinnati, Ohio and is licensed to practice in the states of Ohio and Kentucky. This column is for the purpose of providing general legal insight into the Self-Storage field and should not be substituted for the advice of your own attorney.

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